



Bernard C. "Jack" Young
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Chris Ryer
Director

July 9, 2020

REQUEST: City Council Bill #20-0546/ Natural Resources – Forest and Tree Conservation:
For the purpose of amending the Forest and Tree Conservation provisions of Article 7 of the Baltimore City Code to comply with new State requirements, to coordinate with other City environmental requirements, and to align the Code with existing policy; ...

RECOMMENDATION: Amendment and Approval, with the following amendments:

1. Under §42-1.b. City agency using state funds, strike -G from the reference to COMAR 08.19.04.01D-G.
2. Under §42-8. Area subject to calculations, add:
For a grading or building permit application for an area 40,000 square feet or greater in size, only the area of disturbance is subject to reforestation and afforestation calculations, unless the grading or building permit is part of a master plan, development plan, planned unit development, or subdivision for which the entire master plan, development plan, planned unit development, or subdivision is subject to reforestation and afforestation calculations.
3. Under §45-2.b. Sequence for reforestation, etc., revise the required sequence for reforestation, afforestation, or specimen tree mitigation to place "use of appropriate credits generated by a forest mitigation bank in the city" after off-site mitigation, and before payment into the City Forest Conservation Fund, making it the third method in the sequence.

STAFF: Amy Gilder-Busatti, RLA

PETITIONERS: Council President (Administration) and Councilmembers Bullock, Dorsey, Henry, Burnett, Clarke, Sneed, and Cohen

OWNERS: Various, of properties subject to Forest Conservation program requirements

SITE/GENERAL AREA

Forest conservation regulations are currently applicable citywide for grading permits, sediment and erosion control approvals, subdivisions, or development plans on a parcel of land 20,000 sq. ft. or greater, with certain exemptions. The exemptions include certain types activities covered by state regulations; certain routine maintenance or emergency repairs of public utility rights-of-way; subdivisions, grading or sediment control plans approved before July 1, 1991; land within the Critical Area; and any activity on a single lot that does not result in cutting or clearing, or a grading or sediment and erosion control permit for 20,000 square feet or greater.

HISTORY

The City's Forest Conservation program was established in 1993 as required by the State Forest Conservation Act. The City's forest conservation regulations are established in Baltimore City Code Article 7, Natural Resources, Division IV: Forest and Tree Conservation and the Baltimore City Forest Conservation Manual. The Department of Planning administers forest conservation reviews, grants approvals, manages forest conservation mitigation funds, and provides required reporting to the Maryland Department of Natural Resources as required under local and state code. The Department of Housing and Community Development holds the enforcement authority.

CONFORMITY TO PLANS

The proposed action is consistent with LIVE EARN PLAY LEARN, the Comprehensive Master Plan for Baltimore City, Play Goal 3: Increase the Health of Baltimore's Natural Resources and Open Spaces for Recreation and to Improve Water Quality, Objective 2: Protect and Enhance Baltimore's Natural Habitat and Environmental Resources.

ANALYSIS

Background & Outreach: This bill has been introduced to address updates to the City's local regulations as required by the state, incorporate existing City forest conservation program policies, and coordinate the forest conservation regulations with related codes and development reviews.

In advance of introduction of the legislation, the Department of Planning consulted with and provided informational presentations to stakeholders including local environmental organizations, the Small Developers Collective, Baltimore Developers Workgroup, the Department of Public Works, and Baltimore City Recreation and Parks. A draft of the bill and manual were posted to our website for a comment period in April, which was advertised through the Compass. Many of the comments raised by stakeholders were incorporated into the bill before introduction.

Effects of the Bill

Addition of a Purpose section: The amendment on page 2 lines 13-23 of the bill adds a purpose section to the code.

Addition of Definitions for Critical Root Zone and Specimen Tree: An amendment on page 3 lines 11-18 of the bill adds the definition for Critical Root Zone that is used in the State Forest Conservation Technical Manual. The term is used in an amendment on page 11 of the bill. An amendment on page 5 lines 1-4 of the bill adds to the code the definition for Specimen Tree currently used by the City. The term is referenced in amendments throughout the bill.

Applicability: On page 5, lines 15-23 amend the applicability of Division IV. Division IV currently applies to applications for grading or sediment and erosion control permits, subdivisions, or development plans on a parcel greater than 20,000 square feet. Amendments throughout the bill replace all references to sediment and erosion control permits with building permits. The amendments on page 5 reduce the area subject to this division from a parcel of

20,000 square feet or greater to a parcel or parcels of land for a total area of 5,000 square feet or greater. This change aligns the applicability for Division IV with that of Division II Stormwater Management, Division III Soil Erosion and Sediment Control, and the Baltimore City Landscape Manual. The amendment on page 5 lines 24-27 specifies which level of forest conservation plan approvals would be required for applicable permits and approvals.

Exemptions: Amendments on page 7 lines 12-15 coordinate the exemptions with the amendments to the applicability section.

Review and Notification of completeness: Amendments on page 8 line 23 and page 9 line 1 add email as an allowed method for acknowledging receipt of an application and for providing notification of completeness of an application.

Area subject to calculations: The amendment on page 9 line 19 of the bill aligns this section with the amendments to the applicability section. Staff recommends an amendment to this section to clarify the area subject to calculations.

Effect of failure to submit: The amendment on page 10 lines 3-4 clarifies which types of applications require submission of a forest stand delineation.

Retention of existing forest and specimen trees: The amendment to §44-2 on page 11 lines 1-4 adds specimen trees 20” diameter at breast height (DBH) or larger as a priority for retention. This amendment would codify existing City policy.

Impacts to specimen trees and forests on adjacent properties: The amendment on page 11 lines 7-11 requires an applicant to notify an adjacent property owner if proposed development would significantly impact specimen trees or forests on the adjacent owner’s property.

Cutting prohibited pending approval: The amendment on page 11 lines 27-29 of the bill clarifies which types of permits and approvals require approval of a forest conservation plan.

Modification of a forest conservation easement: The amendment beginning on page 12 line 1 and continuing through page 14 line 28 of the bill codifies the current forest conservation easement modification policy approved by the Planning Commission at the March 5, 2020 Planning Commission meeting. The amendment includes sections covering the process for reviewing modifications, criteria for considering an easement modification, criteria for approval of an easement modification, and the steps to be taken following the approval of a modification.

Specimen tree mitigation: Amendments throughout the bill, including the section beginning with page 14 line 30, add the City’s existing specimen tree mitigation policy to Division IV of the code.

Sequence for reforestation, etc.: An amendment on page 15 lines 13-14 of the bill adds credits generated by a forest mitigation bank in the city as part of the sequence of mitigation techniques. Forest mitigation banks are allowed through the state code and many other jurisdictions in Maryland allow for the use of forest mitigation banks in their local programs. Other

amendments on page 16 of the bill add references to forest mitigation banks regarding when forest conservation fund payments are permitted.

Security required: An amendment on page 15 line 31 of the bill clarifies that security must be provided before the issuance of a grading or building permit.

Forest Conservation Fund – Amendments to comply and coordinate with state code: Several amendments throughout Subtitle 46 propose updates to the code to address recent changes passed by the state legislature or to better coordinate this subtitle with state forest conservation code.

- The amendment on page 16 lines 7-9 adds a reference to state code requirements for forest conservation funds.
- The amendment on page 17 lines 7-9 meets requirements established through state legislation requiring that reforestation or afforestation funds be used to establish the equivalent number of acres of planting for which they were collected.
- The amendment on page 17 lines 16-18 proposes to add afforestation, maintenance of existing forests, and achieving urban canopy goals as purposes for which money contributed to the forest conservation fund may be used. These uses are included in the state code and provide more options for the use of these funds.

Forest Conservation Fund – contribution rate: The amendments on page 16 lines 22-27 increase the fee-in-lieu rate for reforestation or afforestation from \$0.30 per square foot to \$60,000 per acre (equivalent to \$1.38 per square foot). This amendment would align the contribution rate for forest conservation with that approved for the Landscape Manual and Critical Area Management Program. The amendments on page 16 lines 28-33 establish an equivalent contribution rate of \$300 per inch of required specimen tree mitigation.

Annual Report and Biennial Review: The amendments on page 17 line 23 through page 18 line 20 propose to add the local forest conservation program annual reporting and biennial reviews required in the state code to Division IV as a new subtitle. The Department of Planning has always submitted required annual reports and participated in biennial reviews with DNR; however, these requirements are not currently included in the City code.

Variances: Amendments to this subtitle clarify criteria for variances. The amendment on page 18 lines 25-28 of the bill specifies the timing for submitting a variance request. The amendment on page 19 lines 9-10 of the bill proposes to require an applicant for a variance to verify that the need for the variance is not as a result of a violation of the forest conservation code.

Fines: The amendment on page 19 lines 25-28 proposes to update the fine penalty from \$0.60 per square foot to \$120,000 per acre (equivalent to \$2.75 per square foot). This is a proportionate increase to the increase proposed for the mitigation fee rate.

Effective Date: If enacted, the ordinance would be effective 30 days after going into law. Any plans not approved before the effective date would be subject to the new code provisions. The increased fees would apply to any permits approved on or after the effective date.

Recommended Amendments to the Bill

Staff supports all amendments included in the bill. Staff also recommends the following three additional amendments to make technical corrections and clarify requirements:

Technical Correction to §42-1.b. City agency using state funds: Staff recommends an amendment to page 8 line 3 the bill to strike -G from the reference to COMAR 08.19.04.01D-G. This section of COMAR ends with D.

Clarify §42-8. Area subject to calculations: Staff recommends an amendment to page 9, replacing lines 18-20 with the following amendment to clarify the area subject to calculations:

For a grading or building permit application for an area 40,000 square feet or greater in size, only the area of disturbance is subject to reforestation and afforestation calculations, unless the grading or building permit is part of a master plan, development plan, planned unit development, or subdivision for which the entire master plan, development plan, planned unit development, or subdivision is subject to reforestation and afforestation calculations.

Technical Correction to §45-2.b. Sequence for reforestation, etc.: Staff recommends an amendment to page 15 lines 13-19 of the bill to correct the required sequence for reforestation, afforestation, or specimen tree mitigation to place “use of appropriate credits generated by a forest mitigation bank in the city” after off-site mitigation, and before payment into the City Forest Conservation Fund, making it the third method in the sequence.

Notification: On June 23, 2020, the 1st Reader of the bill was sent to the Maryland Department of Natural Resources for review and comment as required by state code. No comments from DNR had been received as of July 2, 2020. Notice of this meeting was sent via GovDelivery to over 17,000 unique subscribers (with a 96% delivery rate). Notification was also provided directly to the Baltimore Forestry Board and the Baltimore Developers Workgroup as a follow-up to briefing presentations provided to those groups about the bill.



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